

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/719,011	<b>Applicant(s)</b> LARRY ET AL.
<b>Examiner</b> Michael C. Wimer	<b>Art Unit</b> 2821

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12/28/07 & 2/28/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 28 December 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Michael C. Wimer/  
Primary Examiner, Art Unit 2821

Continuation of 11, does NOT place the application in condition for allowance because: Although applicant argues that the antennas are small, the language should also include a meaningful and clear recitation that the small antennas are "electrically" small in terms of wavelength. This recitation would make it clear that the elements are not of a substantial wavelength dimension as in the prior art. Merely stating that they are small only sets forth a relative physical size, which is dependent upon frequency of use. For example, a half wavelength and a quarter wavelength are both resonant dimensions. Neither would be considered "small". Electrically small antennas are for example, one eighth or smaller of a wavelength because there is no resonant condition at such lengths. Applicant's remarks in the argument filed 2/28/08 emphasize the spacing and cites a wavelength relationship therefor. Such a specific dimension (in the paragraph bridging pages 2 and 3 of the remarks) is not claimed. The "one half wavelength" recited in the claims is merely a resonant dimension characteristic of antennas at resonance. Also, the claims should make it clear the minimum number of active and passive elements are to be included in the aperture in order to define a properly operating device. Fig. 10 of the reference shows that the spacing may be changed between elements in the antenna aperture in order to provide the proper phasing. Applicant cites the size required in the paragraph bridging pages 2 and 3 of the response. The elements may also be telescoping. The half wavelength spacing is thus defined, in order to have an out of phase relationship. Also, pluralizing the basic arrangement is always obvious to the skilled artisan. Arrays are made as large as the artisan desires in order to provide the required beam pattern, directionality and gain of the system. The claims also do not make it clear what defines an "active" element. Passive elements can be made active in order to be reflective or directive or made to be inactive so as to not affect the beam or coupling. Also, any number of elements may be chosen to define a sub-array, absent any additional claimed structure that defines such an array in order to distinguish it over other element groups. The controller 140 is shown as claimed.